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10/598,707	09/18/2008	George Robert Braun	041292/316661	9175
826	7590	10/24/2011	EXAMINER	
ALSTON & BIRD LLP			PHAM, THANH T	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/598,707	BRAUN, GEORGE ROBERT
	Examiner	Art Unit
	THANH PHAM	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on 08 September 2006.
- 2a)  This action is **FINAL**.                                    2b)  This action is non-final.
- 3)  An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 5)  Claim(s) 1-28 is/are pending in the application.
  - 5a) Of the above claim(s) 22-23, 26, 28 is/are withdrawn from consideration.
- 6)  Claim(s) \_\_\_\_\_ is/are allowed.
- 7)  Claim(s) 1-21, 24-25, 27 is/are rejected.
- 8)  Claim(s) \_\_\_\_\_ is/are objected to.
- 9)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 10)  The specification is objected to by the Examiner.
- 11)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>09/18/2008</u> .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-21, 24, 25, and 27, species I, figs. 1-3, sub-species E, fig.8, and sub-species G, fig.9B in the reply filed on 09/09/2011 is acknowledged. Claims 22-23, 26, and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-2, 4-8, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ichikawa et al. (JP-2002199828) (hereinafter Ichikawa)**

For claim 1, Ichikawa discloses a fishing lure including an illumination means (see abstract, #2); a body having walls defining a water tight cavity (fig.1); a power source (para.[0006], #3) within the cavity, and a control circuit ([0006], #4), within the cavity, connected to the power source and the illumination means wherein said control circuit controls the supply of power to the illumination means such that, in use, light is emitted from the illumination means (see abstract).

For claim 2, Ichikawa discloses a fishing lure wherein the illumination means is located within the cavity (para. [0007] and fig.1) and the emitted light is visible through the walls of the body (abstract)

For claim 4, Ichikawa discloses a fishing lure wherein the walls of the body are translucent (para. [0011])

For claim 5, Ichikawa discloses a fishing lure wherein the walls of the body are transparent (para. [0011])

For claim 6, Ichikawa discloses a fishing lure wherein the illumination means includes a plurality of different colored light emitting diodes (LEDs) (para. [0007]).

For claim 7, Ichikawa discloses a fishing lure wherein in use, the intensity of light emitted by each LED is individually controlled (para. [0007]).

For claim 8, Ichikawa discloses a fishing lure wherein the plurality of different colored LEDs includes more than one combined red, green, and blue LED. (para. [0018] and/or fig.6).

For claim 16, which is a dependent of claim 1, Ichikawa discloses a fishing lure wherein the control circuit (#32) includes a receiver such that upon the receiver receiving control signals the control circuit controls operational functions of the lure (para. [0006] & [0015])

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ichikawa, as applied to claim 1 above, and further in view of Rodgers (5697182).**

For claim 3, Ichikawa is silent about a fishing lure wherein the illumination means is located externally of the cavity on an exterior surface of the body. Rodgers teaches a fishing lure wherein the illumination means is located externally of the cavity on an exterior surface of the body (fig.1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the internal illumination of Ichikawa with external illumination as taught by Rodgers in order to simulate real eyes to attract fish.

**6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ichikawa.**

For claim 9, Ichikawa discloses a fishing lure wherein the plurality of LEDs are arranged in group including a red, green and blue LED located in close proximity to each other (para. [0018] and/or fig.6). Ichikawa is silent about groups of plurality of LEDs. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an additional group of LEDs, since it is has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

For claim 10, Ichikawa discloses a fishing lure wherein in use, the light emitted by the adjacent LEDs combines to produce light of a non-primary color (para. [0019] and/or fig.6)

For claim 11, Ichikawa discloses a fishing lure wherein the non-primary color produced is altered by changing the intensity of the light emitted by one or more of the LEDs. (para. [0019])

**7. Claims 12-14 and 17-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Ichikawa, as applied to claim 1 above, and further in view of Hughes et al. (6807766) (hereinafter Hughes).**

For claim 12, Ichikawa is silent about a fishing lure further including: vibration means within the cavity for imparting a vibration to the body of the fishing lure, wherein the control circuit is arranged to apply power from the power source to the vibration means according to a desired vibration operation pattern.

Hughes teaches a fishing lure including vibration means (see abstract) within the cavity (see abstract) for imparting a vibration to the body of the fishing lure, wherein the control circuit is arranged to apply power from the power source to the vibration means according to a desired vibration operation pattern (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fishing lure of Ichikawa with the vibrator as taught by Hughes in order to enhance the simulation of a swimming bait fish.

For claim 13, Ichikawa as modified by Hughes discloses a fishing lure wherein the control circuit is adapted to intermittently apply power to the vibration means according to a desired duty cycle and/or frequency (Hughes, col.6, lines 6-7 and col.7, lines 23-27)

For claim 14, Ichikawa as modified by Hughes is silent about a fishing lure wherein the control circuit includes a water sensing circuit having electrodes exposed externally to the walls of the body and wherein the sensing circuit is adapted to activate the vibration means and/or illumination means when the electrical resistance between the electrodes drops below a threshold.

Hughes further teaches a fishing lure wherein the control circuit includes a water sensing circuit having electrodes (see abstract) exposed externally to the walls of the body (col.4, lines 1-5) and wherein the sensing circuit is adapted to activate the vibration means and/or illumination means when the electrical resistance between the electrodes drops below a threshold (col.4, lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fishing lure of Ichikawa as modified by Hughes with water sensing electrodes as taught by Hughes in order to create an electric field in the water to attract the fish.

For claim 17, Ichikawa discloses a fishing lure wherein operational functions of the lure include illumination of the body. Ichikawa does not expressly disclose a fishing lure include vibration. However, Hughes teaches a fishing lure include vibration (see abstract) and illumination (see abstract) of the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fishing lure of Ichikawa to include vibration and illumination as taught by Hughes in order to increase the attraction of fish by using both lights and vibration.

For claim 18, Ichikawa as modified by Hughes discloses a fishing lure wherein the control of the illumination function permits illumination of the body with desired colors (Ichikawa, fig.6).

For claim 19, Ichikawa as modified by Hughes discloses a fishing lure wherein the control of the illumination function further permits activation and de-activation of the illumination function (Ichikawa, para. [0008] discloses the light-emitting part is controlled by the power-supply).

For claim 20, Ichikawa as modified by Hughes discloses a fishing lure wherein the control of the vibration function permits activation and de-activation of vibration to the body (Hughes, col.7, lines 23-27).

For claim 21, Ichikawa as modified by Hughes discloses a fishing lure wherein the control of the vibration function permits the intensity and duration of the vibrations to be varied (Hughes, col.7, lines 23-35).

**8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ichikawa as modified by Hughes, as applied to claim 12 above, and further in view of King et al. (6647659) (hereinafter King).**

For claim 15, Ichikawa as modified by Hughes is silent about a fishing lure wherein the vibration means include a motor having a rotatable output shaft and a weight eccentrically mounted on the shaft. King teaches a vibration includes a motor having a rotatable output shaft and a weight eccentrically mounted on the shaft (fig.7A). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify vibrator of Ichikawa as modified by Hughes with the

vibrator as taught by King in order to produce a vibrating action which enhances the simulation of a swimming bait fish.

**9. Claims 24-25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ichikawa, as applied to claim 1 above, in view of Hughes, and further in view of Wong (2002/0116775)**

For claim 24, Ichikawa is silent about a fishing lure system including a rechargeable electrical power source, within the cavity, and a first inductor operatively connected to the at least one rechargeable power source; and a charger located remotely from the fishing lure, including a second inductor, the charger operatively connected to an external power source, wherein locating the fishing lure in proximity with the charger replenishes the rechargeable electrical power source.

Hughes teaches a fishing lure system including a rechargeable electrical power source (col.3, line 58), within the cavity (col.3, line 58), and a charger including an inductor, wherein locating the fishing lure in proximity with the charger replenishes the rechargeable electrical power source (col.3, lines 55-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fishing lure of Ichikawa with a rechargeable battery and a charger with inductor as taught by Hughes in order to provide a quick and easy way of replenishing the power supply to the device.

Ichikawa as modified by Hughes is silent about a fishing lure system including a first inductor operatively connected to the at least one rechargeable power source; and a charger located remotely from the fishing lure, the charger operatively connected to

an external power source. Wong teaches a first inductor (fig.2A, #109) operatively connected to the at least one rechargeable power source (fig.2A, #108); and a charger (fig.2A, #112) located remotely from the fishing lure (fig.2A), the charger operatively connected to an external power source (fig.2A, #113). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the charger of Ichikawa as modified by Hughes with inductive charging as taught by Wong in order to allow wireless communication between the fishing lure and the charger.

For claim 25, Ichikawa as modified by Hughes and Wong discloses a fishing lure system wherein the second inductor includes an opening (Wong, fig.2A), a portion of the body being locatable within the opening during recharging of the electrical power source (Wong, fig.2A).

For claim 27, Ichikawa as modified by Hughes and Wong discloses a fishing lure system wherein the second inductor includes a cavity (Wong, fig.2A), a portion of the body being locatable within the cavity during recharging of the electrical power source (Wong, fig.2A).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THANH PHAM whose telephone number is (571)270-5854. The examiner can normally be reached on Monday to Friday (8:00 p.m-5:00 p.m).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 270-7220. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/  
Primary Examiner, Art Unit 3643

/T. P./  
Examiner, Art Unit 3643